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April 27, 2010

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

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Agenda No. 10  
09/22/09

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

#17 APRIL 27, 2010

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Re: **PROJECT NO. R2008-00138-(5)**  
**CONDITIONAL USE PERMIT NO. 2008-00014-(5)**  
**FIFTH SUPERVISORIAL DISTRICT/THREE-VOTE MATTER**

Dear Supervisors:

Your Board previously conducted a hearing regarding the above-referenced permit which sought to authorize the sale of alcoholic beverages for on-site consumption in a proposed new restaurant located at 47904 90th Street West in the community of Antelope Acres. At the completion of the hearing you indicated an intent to deny the permit and instructed us to prepare findings for denial. Enclosed are findings for your consideration.

Very truly yours,

ANDREA SHERIDAN ORDIN  
County Counsel

By

*Elaine M. Lemke*

ELAINE M. LEMKE  
Principal Deputy County Counsel  
Property Division

APPROVED AND RELEASED:

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EML:vn  
Enclosures

HOA.690027.1

**FINDINGS OF THE BOARD OF SUPERVISORS  
AND ORDER  
PROJECT NUMBER R2008-00138-(5)  
CONDITIONAL USE PERMIT NUMBER 2008-0014-(5)**

1. The Los Angeles County ("County") Board of Supervisors ("Board") conducted a duly-noticed public hearing in the matter of Project No. R2008-00138-(5), consisting of Conditional Use Permit No. 2008-00014-(5) ("CUP") on September 22, 2009. The County Regional Planning Commission ("Commission") previously conducted a duly-noticed public hearing on the requested CUP on February 4, 2009 and March 4, 2009.
2. The applicant, James Morales, requests the CUP to authorize the sale of alcoholic beverages (beer and wine) for on-site consumption in a proposed new restaurant to be named Cactus Inn Bar & Grill ("Cactus Inn") that will be located in an existing one-story commercial building ("Building") which is located at 47904 90th Street West in the community of Antelope Acres. No new construction is proposed.
3. The applicant proposes to serve alcohol using a California Department of Alcoholic Beverage Control ("ABC") Type-41 license which authorizes the sale of beer and wine for consumption both on or off the premises (an ABC "on sale" beer and wine license), in conjunction with the operation of a bona fide eating place.
4. The subject property is zoned C-3 (Unlimited Commercial) and A-1-1 (Light Agricultural, Minimum One-Acre Lot Size). The Building and parking lot are located on the portion of the parcel that is zoned C-3. Surrounding properties are zoned as follows:  
  
North: C-3;  
South: R-3 (Limited Multiple Residence);  
West: C-3; and  
East: A-1-1.
5. Land uses within 500 feet of the subject property consist of the following:  
  
North: Markets, utility company substation, single-family residential, and vacant;  
South: Vacant and single-family residential;  
West: Single-family residential and vacant; and  
East: Community center, vacant, and single-family residential.
6. The subject property is designated as Community Commercial in the Antelope Valley Areawide Plan, a part of the Countywide General Plan. The designation recognizes previously existing commercial sites and allows for additional locally-oriented commercial services.



7. The site is developed with the Building and 23 parking spaces. A single-family residence is located at the rear of the property along with accessory structures. The Building was built in 1951 and served as the Santa Fe Restaurant from approximately 1997 through 1999, with a Type-41 ABC license. From approximately 2000 through 2007, following approval of Plot Plan No. 49968 taking place, the Building housed a retail store and Tinita's Salsa, with manufacturing of salsa taking place on site.
8. The site plan depicts a 2.3-acre property that is flat and rectangular in shape, with the Building measuring 1,630 square feet and 23 parking spaces provided in a parking lot which measures approximately 9,800 square feet. The existing single-family residence on the rear portion of the lot measures 1,400 square feet.
9. Two existing ABC "off-sale" licenses authorizing the sale of beer and wine for off-site consumption only are held by businesses located in Antelope Acres, which are within 600 feet of the subject property: The Village Market located at 47955 90th Street West and Antelope Acres Market located at 48011 90th Street West.
10. The California Business and Professions Code section 23958.4 Application Worksheet, issued by ABC on August 25, 2008, states that an "undue concentration" of alcoholic beverage licenses exists in Census Tract 9009, where the subject property is located. The census tract allows for two "on sale" licenses and currently three "on sale" licenses exist. The census tract allows for two "off-sale" licenses and currently two "off-sale" licenses exist.
11. Los Angeles County Code ("County Code") section 22.56.195 requires, among other things, that the requested use at the proposed location "not adversely affect the use of a place used exclusively for religious worship, school, park, playground, or any similar use within a 600-foot radius." The Antelope Acres Community Center ("Community Center") is such a use and is located approximately 200 feet from the subject property along the eastern edge of the subject property. The Community Center property is used by children for 4-H activities and also provides facilities for athletic activities.
12. The land use radius map submitted by the applicant indicates that there are two locations that sell alcohol within a 600-foot radius of the subject property, both of which sell a full line of alcoholic beverages for off-site consumption. There is no other establishment within a 600-foot radius for on-site consumption.
13. On December 23, 2008, notices for the Commission's public hearing were mailed to property owners within 1,000 feet of the subject property. ABC was also notified of the Commission's public hearing. Additionally, advertisements were submitted for publication to the *Antelope Valley Press* on the same date. Case-related material, including the hearing notice and factual and burden of proof materials were sent on the same date to the Lancaster Public Library.



14. According to the applicant, the notice for the Commission's public hearing was posted on the subject property on December 31, 2008, or 35 days prior to the first public hearing on February 4, 2009. However, the applicant removed the sign in the morning of February 2, 2009, and reposted the sign in the morning of February 3, 2009. Thus, the sign was not posted on the property for approximately 24 hours. The February 4, 2009 public hearing, however, was continued an additional 30 days to March 4, 2009, and the hearing notice continued to be posted, thereby eliminating prejudice to any parties due to the minor lapse in posting.
15. At the Commission's first day of its public hearing on February 4, 2009, the applicant testified in favor of the project and answered questions posed by the Commission. Several individuals testified in favor of the application and a representative of the Community Center testified in opposition to the application. The Commission continued the hearing to March 4, 2009, which allowed the applicant time to meet again with the Antelope Acres Town Council ("Town Council") and the community to address issues and concerns raised and to provide a clearer project description.
16. The Commission resumed its continued public hearing on March 4, 2009. The applicant, who met a second time with the Town Council on February 18, 2009, testified again in favor of the project and answered additional questions posed by the Commission. A representative of the Town Council and several members of the community testified for and against the application.
17. The Commission received seven letters in support and 16 letters in opposition to this CUP request, including letters of opposition from the Town Council (February 25, 2009) and the Community Center (February 3, 2009).
18. The Commission received an applicant-organized petition "for people in favor of opening the Cactus Inn Bar & Grill" with approximately 135 signatures, and another petition "in support of the Cactus Inn" with 23 signatures. From these two petitions, 85 names were highlighted to indicate that they were residents of Antelope Acres.
19. The Commission received a "Petition to NOT grant the Cactus Inn Bar & Grill CUP [No.] 2008-00014-(5) allowing operation or service of beer and wine without the attached conditions" with nine signatures. The individual providing the petition stated that an additional 40 signatures were collected at a local Neighborhood Watch meeting, which took place several days before the second public hearing session, but that the petition had been lost or stolen.
20. According to written information from, and testimony by, the Town Council, the applicant testified before the Town Council on January 21, 2009 and February 18, 2009, in support of the proposed CUP. On February 18, 2009, the Board of Directors of the Town Council voted 5-0 to oppose the application and to express its support for a "family-friendly" restaurant in the community. A letter



dated February 25, 2009, was submitted by the Town Council to the Commission explaining the Town Council's opposition to the CUP.

21. The Town Council asserted that the establishment as proposed "will threaten our rural way of life and present[s] numerous safety concerns," and stated "that the serving of alcohol will in fact involve later hours of operation than the typical family-friendly restaurant and introduce an undesirable atmosphere in the middle of our community, an area of concentrated residential housing, two markets with off-sale licenses, our community church, and our Community Center, an area frequented by young children." (February 25, 2009 Town Council letter to Commission.)
22. The Town Council suggested that if the CUP was granted, additional conditions be added, including prohibitions of coin-operated amusements or pool tables, no live entertainment, the hiring of at least one full-time cook, no pay phones on the exterior of the premises, a requirement that alcoholic beverages be sold in conjunction with meals, and hours of operation no longer than 6 a.m. to 10 p.m., Sunday through Saturday. The Town Council stated that the applicant did not agree to these conditions. Staff from the County Department of Regional Planning ("Regional Planning") recommended similar conditions as did the County Sheriff's Department ("Sheriff's Department").
23. The applicant owned a similarly-named Cactus Inn, located at 5022 Fort Tejon Road in the City of Palmdale ("Cactus Inn/Palmdale") through the fall of 2007. Publications submitted to the Commission that included customer reviews and event listings indicated that the establishment was operated primarily as a bar and was often patronized by motorcycle riders. The Town Council asked the applicant about his intentions for the proposed operations of the Cactus Inn at the Antelope Acres location, but was unsatisfied with the applicant's answers. The Town Council also wrote that they were "still unable to get (from the applicant) what we feel are straightforward and informative answers to several key concerns." (February 25, 2009 Town Council letter to Commission.)
24. A resident of the Antelope Acres area asserted in written communication to the Commission that the applicant stated that he intended to operate the same type of establishment at the new location as had existed in Palmdale.
25. The applicant provided a proposed food menu entitled "Cactus Inn's Afternoon & Evening Menu" with limited entree options that the Commission found to be more characteristic of a bar-type establishment than a restaurant, and which it felt indicated the applicant's intent to operate the establishment primarily as a bar.
26. The applicant provided a proposed drink menu entitled "Cactus Inn's Beer & Wine Well" that listed draft beer in 32-oz. containers, which the Commission found indicated the applicant's intention to operate the establishment primarily as a bar.



27. The site plan submitted by the applicant is characteristic of a bar establishment. It depicts a 35-foot bar with 16 bar stools and 10 tables with a total seating capacity of 46 seats. Thirty-five percent of the total seating capacity is at the bar. Of the 10 tables, six are raised circular tables with a proposed four-person seating capacity.
28. Evidence was also received by the Commission on the record of law enforcement calls to Cactus Inn/Palmdale. A Sheriff's Department Deputy testified at the Commission's February 4, 2009 public hearing and provided an interpretation of the 19 law enforcement calls for service between December 17, 2002 and December 17, 2007, to the Palmdale location.
29. Regarding the subject property, the Sheriff's Department provided crime-related information to Regional Planning in a report dated December 16, 2008. This report discussed the former establishments located on the subject property, the Santa Fe Restaurant and Tinita's Salsa. The Sheriff's Department recommended that if the CUP were approved that certain additional conditions of approval, similar to those suggested by Regional Planning and the Town Council, be adopted to help ensure that the applicant would operate the business as a bona fide restaurant.
30. Antelope Acres is served by the Lancaster Station of the Sheriff's Department, which is located approximately 12 miles east of the subject property. If the proposed use on the subject property in Antelope Acres were similar to the Cactus Inn/Palmdale, service calls might be required, and if so, the extended response time might affect the safety of patrons and the surrounding community.
31. At both the February 4, 2009 and March 4, 2009 public hearing sessions, the Commission heard testimony from the applicant objecting to the additional conditions drafted by staff, conditions designed to create a bona fide restaurant, a use that is permitted in zone C-3 without a CUP. Such conditions included prohibitions of a billiard table, gaming machines, and live entertainment; the hiring of at least one full-time cook; alcoholic beverages served only with meals; and a closing time of 10 p.m. from Sunday through Thursday, and at midnight on Fridays and Saturdays.
32. The Commission heard concerns from staff about the applicant abiding by the conditions of a CUP based on the existing zoning enforcement action on the subject property. The applicant was informed of three violations of the Zoning Code on the subject property two weeks prior to the second March 4, 2009, public hearing session. The applicant had not corrected the zoning violations prior to the hearing and a formal Notice of Violation was issued by zoning enforcement staff on March 4, 2009.
33. Information was received showing advertising for the proposed restaurant and bar indicating an intent to draw customers from a regional, rather than a local base, which was also reflected by the fact that at least 40 percent of the



signatories of a petition in favor of the establishment resided outside of Antelope Acres.

34. Regional Planning determined that a Categorical Exemption, Class 1 – Existing Facilities, is the appropriate environmental documentation under the California Environmental Quality Act ("CEQA") reporting requirements.
35. On March 4, 2009, after hearing all testimony, the Commission closed the public hearing. The Commission found, among other things, that the nature of the proposed use is entirely contrary to the character of the existing rural community. The Commission also found that the proposed use could increase the incidence of crimes and vandalism in the surrounding Antelope Acres community based on, among other things, information from the Sheriff's Department.
36. The Commission also found that the proposed use is inconsistent with the General Plan because the applicant failed to establish that the business would provide locally-oriented commercial services.
37. The Commission also found the proposed use is inconsistent with the General Plan because the use is inconsistent with the rural residential community consisting of "a series of large parcels which are either homesites or ranches" and the rural life style promoted by the Antelope Valley Areawide Plan.
38. The Commission also found that the proposed use would not serve as a convenience and necessity within the community due to the other establishments in the area providing for beer and wine sales.
39. Based on all of the testimony and the above findings, after the close of the hearing on March 4, 2009, the Commission voted 4-0 to deny the CUP.
40. Pursuant to section 22.60.200.A of the County Code, the applicant appealed the Commission's denial of the CUP to the Board.
41. On September 22, 2009, the Board conducted its public hearing on the appeal. At the public hearing the Board heard a presentation from Regional Planning staff and testimony for and against the project. In addition to the applicant, four persons testified in favor, including a member of the applicant's family, a long time acquaintance, and someone who had worked for the applicant for 10 years. Testifying against the project were five persons including representatives of the Town Council, Antelope Acres West Side 4-H, the Community Center, and individuals residing in the area including a neighbor of the subject property.
42. Opposition testimony focused on the proposed nature of the business and concerns of potential drunk drivers causing danger to pedestrians and other drivers in the area; noise issues particularly at night given that many area residents retire early in the evening; incompatibility with the uses at the community center; and other compatibility issues.

43. The Board inquired of staff about how the proposed business would serve the local community, that is, those persons within the zoning area. Staff testified that the applicant had demonstrated an intent to draw clientele from the wider area, as shown in the petition submitted by the applicant, where a significant percentage of the signatories lived outside the community. Staff noted that the applicant had advertised the new premises in regional publications and proposed hours of operation that were longer than necessary for the local population.
44. At the Board hearing, staff reiterated its conclusion that the proposed interior design of the Building is characteristic of a bar, as exemplified in the proposed seating design discussed in Finding No. 27 above.
45. The Board asked staff whether a restaurant could be created on the subject property without the need for a CUP, and also heard testimony from staff about the sensitive use within 600 feet of the proposed project, the Community Center. Staff confirmed that the property could be used as a restaurant that did not serve alcohol without obtaining a CUP pursuant to County Code section 22.28.180.A.2.
46. The Board heard testimony from staff about the Town Council's 5-0 vote to oppose the proposed project.
47. The Board finds that the proposed use is inconsistent with the Antelope Valley Areawide Plan, a component of the Countywide General Plan, because the applicant failed to demonstrate that the use will serve the needs of the local population.
48. The Board finds that the proposed use is also inconsistent with the Areawide Plan because it is inconsistent with the lifestyle of the community described by the plan, which states that Antelope Acres is a rural residential community that "consists of a series of larger parcels which are either homesites or ranches. The Plan recognizes this lifestyle." The proposed use would be located along 90th Street West, which serves as the main thoroughfare through this community and has a concentration of residences, an elementary school, and a church. The residences and other uses along 90th Street West would be negatively impacted by noise associated with the proposed use.
49. The Board finds that the proposed restaurant with the sale of beer and wine would not serve as a convenience or necessity within this community, as there are two existing markets in close proximity to the subject property, within Antelope Acres, that sell beer and wine for off-site consumption.
50. The Board finds that the applicant has not demonstrated that adequate support exists in the community for this CUP.
51. The Board finds that it will not be possible to place appropriate restrictions on the operation of the proposed use to ensure that it will be compatible with surrounding land uses.



**BASED ON THE FOREGOING, THE BOARD OF SUPERVISORS CONCLUDES:**

1. That the requested use at the proposed location will adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area; will be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site; and will jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare;
2. That the requested use at the proposed location will adversely affect the use of a place used exclusively for religious worship, school, park, playground, or any similar use within a 600-foot radius; is not sufficiently buffered in relation to the residential area within the immediate vicinity so as not to adversely affect said area; will result in an undue concentration of similar premises; and will adversely affect the economic welfare of the nearby community; and
3. That the information submitted by the applicant and presented at the public hearing does not substantiate the required findings and burden of proof for the CUP as set forth in sections 22.56.090 and 22.56.195 of the County Code.

**THEREFORE, THE BOARD OF SUPERVISORS:**

1. Denies Project No. R2008-00138-(5), consisting of Conditional Use Permit No. 2008-00014-(5)